

2022 GIG Conference & Expo

Taxation of Gambling in Germany

Berlin, 19. - 20.09.2022

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2022 ranked among the Germany's Top Tax Lawyers in the field of International Taxation by WirtschaftsWoche



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Overview

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Terms and Definitions

English		German	
Amusement Tax		Vergnügungssteuer	
Betting Establishment Tax		Wettbürosteuer	
Casino		Spielbank	
Casino Tax		Spielbankabgabe	
Controlled Foreign Company	CFC	Hinzurechnungsbesteuerung	HZB
Corporate Income Tax	CIT	Körperschaft- und Gewerbesteuer	KSt/GewSt
General Anti Avoidance Rules	GAAR	Steuervermeidungsregeln	
Gross Gaming Revenue	GGR	Bruttospielertrag	BSE
Gross Gaming Yield	GGY	Bruttospielertrag	BSE
Gross Stake		Einsatz	
Horse Race Betting Tax		Rennwettsteuer	
Online Poker Tax		Online Poker Steuer	
Permanent Agent	PA	Ständiger Vertreter	StV
Permanent Establishment	PE	Bestriebsstätte	BS
Place of effective Management	PoM	Ort der Geschäftsleitung	OdL
Sports Betting Tax		Sportwettensteuer	
Virtual Slot Games Tax		Virtuelle Automatensteuer	

Income Taxation of Gamers and Gamblers

Gaming in Germany - Taxation

Income Tax on Winnings

Gamer / Gambler	Tax Base	Tax Rate ITC incl. Solidarity Surcharge
Private Gamer/Gambler	not taxable	
Professional Gamer/Gambler	Net Profit	max. 47,5%

- Private winnings are not taxable
- Professional winnings are taxable on a net profit basis
- Distinction between private and professional gamers becomes practically relevant in poker gambler cases
- Practical problem to prove expenses and losses

Tax Base

Tax Base			
P & L	Gambling Taxation at Stake	Gambling Taxation at Gross Gaming Revenue	Business Tax
Earnings			
Gambling Stake	Amusement Tax Betting Establishment Tax Lotteries Tax Online Casino Tax Virtual Slot Games Tax Sports Betting Tax Horse Race Betting Tax Online Poker Tax		
Other Income			
Costs			
./. Winnings		Amusement Tax Casino Tax Online Casino Tax	
./. Other Cost			
./. Gambling Taxes	3%-6,5%/5,3%/20%	12% - 80%	
Net Business Profit			Corporate Tax / Trade Tax
			~30%

Ranking

TOP 10 HIGHEST VS LOWEST GAMBLING TAXES AROUND THE WORLD

HIGHEST		LOWEST	
GERMANY	90%	RUSSIA	0%
FRANCE	80%	ITALY	0%
AUSTRIA	80%	CAMBODIA	2%
LUXEMBOURG	80%	BELGIUM	2.5%
DENMARK	75%	CZECHIA	6%
POLAND	50%	US	6.75-8%
UK	50%	S. AFRICA	9.6%
AUSTRALIA	45%	FINLAND	12%
MACAU	39%	SINGAPORE	5-15%
KENYA	35%	PORTUGAL	15%

taxback.com

- List refers to **Casino** Gross Gaming Revenue
- State Monopoly
- Operator either states or licensed private companies
- List does not reflect the whole gambling and gaming market

Taxation of Operators / Providers of Gambling and Gaming

Gaming in Germany - Taxation

Operator / Provider	Corporate Income Tax & Trade Tax on Business Profits (CIT)		Federal Gaming and Gambling Taxes	State Gaming and Gambling Taxes		Local Municipality Taxes		State Regulated Casinos						
	Tax Base	Tax Rate incl. Solidarity Surcharge		Horse Race Betting	Sports Betting	Virtual Slot Games	Online Poker	Lotteries	Online Casino Tax Schleswig-Holstein	Online Casino Tax NRW	Betting Establishment Tax	Amusement Tax	Casino Tax	Online Casino Tax
German Operator (Seat/PoM in Germany)	Net Profit World	~30%	Scope	Horse Competition	Sport Events (not Horse)	Online Slot Games	Online Poker Games	Lotteries, Raffles	Online Casino Games		Betting (all kinds) in an Establishment	Terrestrial Slot Games	Terrestrial Casino Games	Online Casino Games
Foreign Operator (PoM in Germany)			Tax Base	Bet/Gross Stake minus tax			Ticket Price minus tax	Gross Gaming Revenue (GGR)		Gross Stake	GGR or Gross Stake	GGR		
Foreign Operator (PE or Permanent Agent in Germany)	Net Profit Germany		Tariff	5,3%			20,0%	34%/39%/44%	30%/55%; tax credit for foreign taxes	2% - 5%	12% - 26% of GGR or 3% - 6,5% of Gross Stake	20% - 80 %	25%-60%	
Foreign Operator (no PE not Permanent Agent in Germany)	not taxable in Germany		Ref.	§§ 9, 10 RWLG	§§ 16 ff RWLG	§§ 36 ff. RWLG	§§ 46 ff RWLG	§§ 26 ff RWLG	§§ 1 ff. Schl.-H. Online-Casino-Besteuerungsgesetz 15.4.2022	§§ 19 ff. Online-CasinospielG NRW 23.2.2022	Local Tax in all states; except for Bavaria	Local Tax in all states; except for Bavaria	Each state has its own regulation.	SpielbankG Brandenburg
German Holding / Malta Subsidiary Operator	depending on Cfc/GAAR	8,5% (Malta + Germany CIT)		Exempt from VAT				VAT						
Casino Operator (regulated by law of the federal states)	tax exempt												VAT yes, credited against Casino Tax	

Providers qualify for Taxes on Gaming within the German Nexus and Scope

Business Taxes

Operator / Provider	Corporate Income Tax & Trade Tax on Business Profits (CIT)	
	Tax Base	Tax Rate incl. Solidarity Surcharge
German Operator (Seat/PoM in Germany)	Net Profit World	~30%
Foreign Operator (PoM in Germany)		
Foreign Operator (PE or Permanent Agent in Germany)	Net Profit Germany	
Foreign Operator (no PE not Permanent Agent in Germany)	not taxable in Germany	
German Holding / Malta Subsidiary Operator	depending on CfC/GAAR	8,5% (Malta + Germany CIT)
Casino Operator (regulated by law of the federal states)	tax exempt	

Operations in Germany are subject to Corporate Tax and Trade Tax (30% of net profit) if

- Company is located in Germany (Seat a/o PoM)
- runs business through a PE/PA in Germany

German Company can reduce tax burden, e.g. through a Maltese double tier structure; German CfC rules and GAAR challenge the tax structure

State Casinos that are subject to Casino tax are tax exempt for the reason that the Casino tax covers the ordinary business tax

Federal Taxes – Rennwett- und Lotteriegesetz (RWLG)

Operator / Provider	Federal Gaming and Gambling Taxes				
	1922	2012	2021	2021	1922
	Horse Race Betting	Sports Betting	Virtual Slot Games	Online Poker	Lotteries
German Operator (Seat/PoM in Germany)	Horse Competition Totalisator	Sport Events	Online Slot Games	Online Poker Games	Lotteries, Raffles
Foreign Operator (PoM in Germany)	Bet/Gross Stake minus tax				Ticket Price minus tax
Foreign Operator (PE or Permanent Agent in Germany)	5,3%				20,0%
Foreign Operator (no PE not Permanent Agent in Germany)	§§ 9, 10 RWLG	§§ 16 ff RWLG	§§ 36 ff. RWLG	§§ 46 ff RWLG	§§ 26 ff RWLG
German Holding / Malta Subsidiary Operator	Exempt from VAT				

Nexus

- German Operators (Seat, PoM in Germany)
- Foreign Operators if following respective action is performed in Germany by **counterpart**:
 - betting contract (Sports bets; also Horse race bets if not taxed under Horse Race Betting Tax)
 - lottery contract (Lottery)
 - Gaming contract (Virtual Slot Games; Online Poker)

Conclusion

Residence of Gamer/Gambler/Bettor gives Germany the right to tax foreign Operators

Federal State Taxes – Online Casino Tax

Operator / Provider			State Gaming and Gambling Taxes		
			Online Casino Tax Schleswig-Holstein	Online Casino Tax NRW	
German Operator (Seat/PoM in Germany)	Providers qualify for Taxes on Gaming within the German Nexus and Scope	Scope	Online Casino Games		
Foreign Operator (PoM in Germany)		Tax Base	Gross Gaming Revenue (GGR)		
Foreign Operator (PE or Permanent Agent in Germany)		Tariff	34%/39%/44%	30%/55%; tax credit for foreign taxes	
Foreign Operator (no PE not Permanent Agent in Germany)		Ref.	§§ 1 ff. Schl.-H. Online-Casino- Besteuerungsgesetz 15.4.2022	§§ 19 ff. Online-CasinospielG NRW 23.2.2022	
German Holding / Malta Subsidiary Operator			VAT		

Nexus

- German Operators or foreign Operators if following action is performed in the respective federal state by **counterpart**:
 - Gaming contract (Online Casino Games)

Conclusion

- The location of Operator is irrelevant.
- In NRW illegal operations are taxable.

Possible Taxation Gap

- It is not clear if illegal operations are taxable in Schleswig-Holstein

Local Municipality Taxes

Operator / Provider	Corporate Income Tax & Trade Tax on Business Profits (CIT)			Local Municipality Taxes		
	Tax Base	Tax Rate incl. Solidarity Surcharge		Betting Establishment Tax	Amusement Tax	
German Operator (Seat/PoM in Germany)	Net Profit World	~30%	Providers qualify for Taxes on Gaming within the German Nexus and Scope	Scope	Betting (all kinds) in an Establishment	Terrestrial Slot Games
Foreign Operator (PoM in Germany)				Tax Base	Gross Stake	GGR or Gross Stake
Foreign Operator (PE or Permanent Agent in Germany)	Net Profit Germany	Tariff		2% - 5%	12% - 26% of GGR or 3% - 6,5% of Gross Stake	
Foreign Operator (no PE not Permanent Agent in Germany)	not taxable in Germany			Ref.	Local Tax in all states; except for Bavaria	Local Tax in all states; except for Bavaria
German Holding / Malta Subsidiary Operator	depending on Cfc/GAAR	8,5% (Malta + Germany CIT)			VAT	

Nexus

Betting Establishment Tax

- German Operators or foreign Operators if they run a betting establishment in a city where such local tax is levied.

Amusement Tax

- German Operators or foreign Operators if they run an Entertainment Centre with terrestrial slot machines .

Casino Tax, Online Casino Tax

<i>State Regulated Casinos</i>			
		<i>Casino Tax</i>	<i>Online Casino Tax</i>
Providers qualify for Taxes on Gaming within the German Nexus and Scope	Scope	<i>Terrestrial Casino Games</i>	<i>Online Casino Games</i>
	Tax Base	<i>GGR</i>	
	Tariff	20% - 80 %	25%-60%
	Ref.	<i>Each state has its own regulation.</i>	<i>SpielbankG Brandenburg</i>
<i>VAT yes, credited against Casino Tax</i>			

State Regulated Casinos

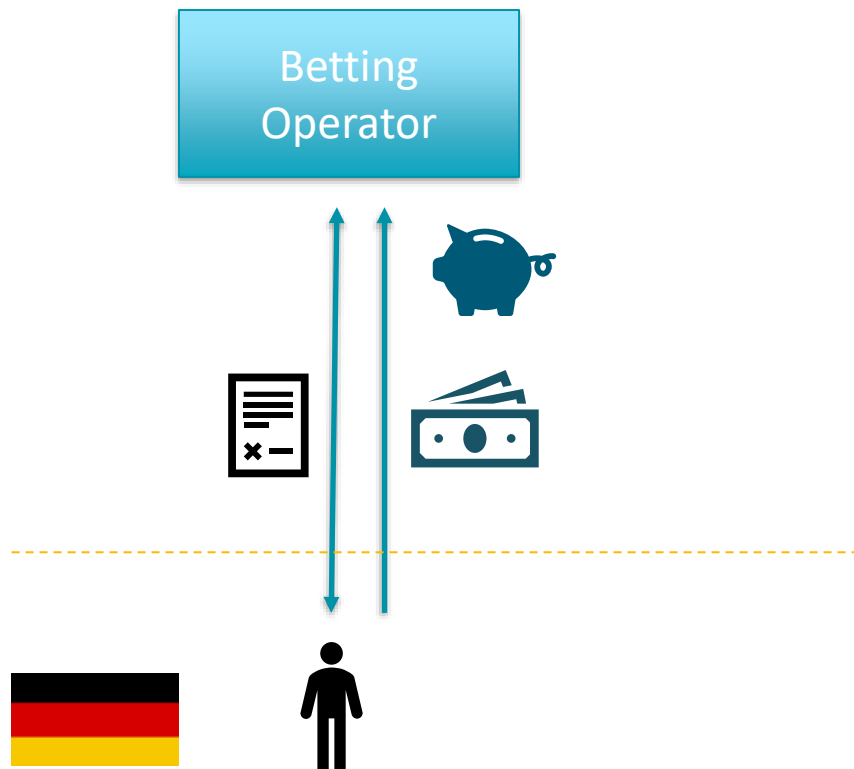
- Monopoly in each state
- Operated by states or private licensed companies
- Casino Tax replaces all other business taxes
- VAT yes, but credited against Casino Tax
- Brandenburg hat Online Casino Tax

Out of Scope - Tax Gap

Online bets placed abroad that are not sports bets are not taxable, e.g.

- betting on dog races,
- e-sports competitions,
- social bets

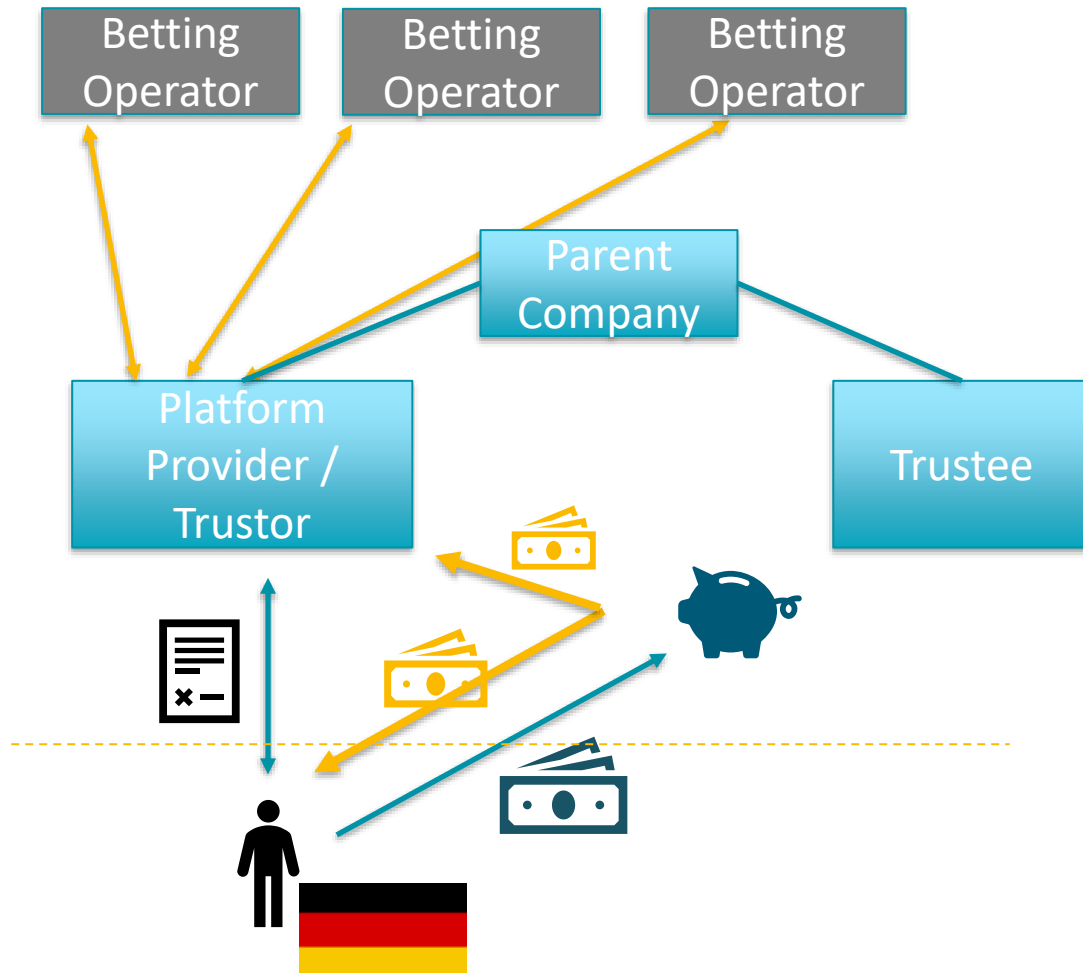
Case Study 1 – Sports Betting Tax



BFH Judgement 17.05.2021 – IX R 20/18, DStRE 2021, 1387

- Taxation of operators with seat in the EU complies to freedom of providing services within the EU.

Case Study 2 – Sports Betting Tax



BFH Judgement 07.09.2021 – IX R 5/19, BFH/NV 2022, 131

- Who triggers sports betting tax?
- A foreign provider of an **internet betting exchange platform** is subject to Sports Betting Tax even though he is not party of the betting contract.
- Platform provider receives a provision.
- Tax (**5% of bet!!!**) > provision
- Note: A pure intermediary of sports betting is not subject to Sports Betting Tax.
- **Problem:** Betting Operators are also subject to tax. Economic double taxation.

Case Study 3 – Sports Betting Tax



BFH Judgement 26.05.2020 – IX R 6/19, DStRE 2021, 114

- Foreign operator of Horse Race Betting
- Horse Race Tax?: Totalisator (-)
- Sports Betting Tax?: A foreign operator of Horse Race Betting that does not meet the requirements for the Horse Race Betting Tax, however, is subject to Sports Betting Tax

Legislative Objectives (eg. Racing Betting and Lotteries Act)

1922

Introduction of Racing Betting Tax

- **Fiscal objective:** To make the betting passion that is active in horse racing financially viable (Verh. d. RT., Vol. 369, No. 2870, p. 7)
- **Steering considerations:** Too high a tax would make the bookmakers' business impossible and again lead to the undesirable state of angle bookmaking (Verh. d. RT., vol. 369, no. 2870, p. 12 f.)

Legislative Objectives (eg. Racing Betting and Lotteries Act)

2012

Introduction of the sports betting tax

- **Fiscal goal:** taxation of all sports betting (BT-Drs. 17/8494, p. 8)
- **Steering objective:** Promoting the transfer of the hitherto illegal betting offer into legality by means of a reduced tax rate in order to be able to take appropriate measures to reduce sight risks (BT-Drs. 17/8494, p. 9; BT-Drs. 17/10168, p. 5)
- **Control objective:** curbing the passion for gambling by taxing the player's expenses for obtaining the chance to win (BFH, ruling dated 26 May 2020 - IX R 6/19)

Legislative Objectives (eg. Racing Betting and Lotteries Act)

2021

New conception of the RennwLottG

- **Fiscal goal:** Creation of adequate tax regulations and closing of taxation gaps (BT-Drs. 1/28400, p. 42)
- **Guidance goal:** Promoting the transfer of the previous illegal gambling offer into legality (BT-Drs. 19/28400, p. 42).
- **Steering objective:** Amount to combat gambling addiction and other negative phenomena of gambling (BT-Drs. 19/28400, p. 42).

Legislative Conflict

- Conflict of aims between channelling and containing the passion for gambling
- Far-reaching scope for decisions of the legislator in the selection of the tax object and the assessment of the tax rate (BVerfG v. 22.3.2022 - 1 BvR 2868/15 u.a., case law)
- Legislative assessment prerogative with regard to the suitability of the tax regulation for achieving the objectives pursued (BVerfG v. 19.11.2021 - 1 BvR 781/21 u.a., case law)

Tax Payers Objections against Taxation

EU Law

Arguments:

- Freedom of Establishment
- Freedom of Service
- Freedom of Capital
- Illegal State Aid

Grundgesetz (German Constitution) Finance Constitution

Arguments:

- Tax Competence of Legislator, Art. 105 IIa GG

Referring to local taxes such as Betting Establishment Tax, Amusement Tax

Grundgesetz (German Constitution) Basic Rights

Arguments:

- Freedom of Profession (Art. 12 I GG)
- Equal Treatment (Art. 3 I GG)

Referring to strangling/confiscatory Tax Effect

- Amusement Tax
- Betting Establishment Tax
- Virtual Slot Games Tax
- Sports Betting Tax

Current Case Law

Betting Establishment Tax

- **OVG NRW v. 17.01.2020 - 14 A 1843/19:** Bets placed outside the betting office via the internet are **not** subject to betting office tax.

Virtual Slot Games Tax

- **OVG Berlin-Brandenburg v. 25.01.2022 - OVG 6 S 41/21; VG Berlin v. 27.10.2021 - VG 26 L 149/21:** Virtual Slot Games Tax and Online-Poker Tax are no **state aid** in favour of operators of terrestrial slot machines that are not subject to such taxes.
- **FG Sachsen v. 21.04.2022 - 8V 92/22:** No constitutional concerns that the Virtual Slot Games Tax is assessed according to the stakes and not according to the gross gaming revenue. (FG Sachsen v. 21.04.2022 - 8V 92/22)

VAT

- **FG Münster v. 27.12.2021 - 5 V 2705/21 U,** appeal pending before the BFH: **VAT on turnover of terrestrial slot machines** may violate the VAT principle of neutrality if virtual slot gaming turnover is exempt from VAT, while so-called terrestrial slot gaming turnover is subject to VAT (appeal pending before the BFH)

Outlook

- Changes in tax legislation due to court decisions are hardly to be expected because of the legislator's discretion for decision-making.
- No legislator's will to reform gambling taxes in order to make legal businesses competitive against illegal businesses.
- Legislators only reacts in case of new regulations under regulatory law.
- It is unclear how legislator reacts if
 - the illegal market stagnates or grows and/or
 - tax legislation is counteracting the new regulation of the gambling market.

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